

House Bill 1132 (AS PASSED HOUSE AND SENATE)

By: Representatives Lindsey of the 54th, Tumlin of the 38th, Ashe of the 56th, Teilhet of the 40th, Willard of the 49th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to enact the "Uniform Environmental Covenants Act"; to provide for a short title; to define terms; to provide for the nature of rights and subordination of interests; to provide for the contents of an environmental covenant; to provide for validity and the effect on other instruments; to provide for the relationship between environmental covenants and other land use laws; to provide for notice of an environmental covenant; to provide for recording of environmental covenant; to provide for duration of environmental covenant and amendment by court action; to provide for amendment or termination of an environmental covenant by consent; to provide for enforcement of environmental covenants; to provide that a registry of environmental covenants may be established; to provide for rules, regulations, and fees; to provide for uniformity of application and construction; to provide for interaction with federal law; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by adding a new chapter to read as follows:

"CHAPTER 16

44-16-1.

This chapter may be known as and may be cited as the 'Uniform Environmental Covenants Act.'

44-16-2.

As used in this chapter, the term:

(1) 'Activity and use limitations' means restrictions or obligations created under this chapter with respect to real property.

(2) 'Agency' means the Environmental Protection Division of the Department of Natural Resources or any federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) 'Common interest community' means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) 'Environmental covenant' means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) 'Environmental response project' means a plan or work performed for environmental remediation of real property and conducted:

(A) Under a federal or state program governing environmental remediation of real property;

(B) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) Under a state voluntary clean-up program.

(6) 'Holder' means the grantee of an environmental covenant as specified in subsection (a) of Code Section 44-16-3.

(7) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, political subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

44-16-3.

(a) Any person, including a person that owns an interest in the real property, the agency, or a municipality, county, consolidated government, or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder shall be an interest in real property.

(b) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, shall not be considered an interest in real property.

(c) An agency shall be bound by any obligation it assumes in an environmental covenant, but an agency shall not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant shall be bound by the obligations

the person assumes in the covenant, but signing the covenant shall not change obligations, rights, or protections granted or imposed under law.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) An interest that has priority under other law shall not be affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant;

(2) The provisions of this chapter shall not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association; and

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but shall not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

44-16-4.

(a) An environmental covenant shall:

(1) State that the instrument is an environmental covenant executed pursuant to this chapter;

(2) Contain a legally sufficient description of the real property subject to the covenant and the name of the owner of the fee simple of the real property subject to such covenant at the time such covenant is executed;

(3) Describe the activity and use limitations on the real property;

(4) Identify every holder;

(5) Be signed by the agency, every holder, and, unless waived by the agency, every owner of the fee simple of the real property subject to such covenant; and

(6) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a) of this Code section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) Requirements for periodic reporting describing compliance with the covenant;

(3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) Limitation on amendment or termination of the covenant in addition to those contained in Code Sections 44-16-9 and 44-16-10; and

(6) Rights of the holder in addition to the right to enforce the covenant pursuant to Code Section 44-16-11.

(c) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

(d) The agency shall not sign the environmental covenant without confirming that the people or entities listed in paragraphs (1) through (6) of subsection (a) of Code Section 44-16-7 have been served with a copy of the proposed final text of the environmental covenant at least 30 days prior to the agency signing such covenant.

44-16-5.

(a) An environmental covenant that complies with this chapter runs with the land.

(b) An environmental covenant that is otherwise effective shall be valid and enforceable even if:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to a person other than the original holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) The benefit or burden does not touch or concern real property;

(7) There is no privity of estate or contract;

(8) The holder dies, ceases to exist, resigns, or is replaced; or

(9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of this chapter shall not be invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b)

of this Code section or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter shall not apply in any other respect to such an instrument.

(d) This chapter shall not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

44-16-6.

This chapter shall not authorize a use of real property that is otherwise prohibited by zoning, by ordinance, by local law, by general law, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are otherwise authorized by zoning, by ordinance, by local law, or by general law.

44-16-7.

(a) A copy of an environmental covenant shall be provided in the manner required by the agency and shall establish proof of service to:

(1) Each person that signed the covenant;

(2) Each person holding a recorded interest in the real property subject to the covenant;

(3) Each person in possession of the real property subject to the covenant;

(4) Each municipality, county, consolidated government, or other unit of local government in which real property subject to the covenant is located;

(5) Each owner in fee simple whose property abuts the property subject to the environmental covenant; and

(6) Any other person the agency requires.

(b) The validity of an environmental covenant shall not be affected by failure to provide a copy of the covenant as required under this Code section.

44-16-8.

(a) An environmental covenant and any amendment or termination of the covenant shall be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in subsection (c) of Code Section 44-16-9, an environmental covenant shall be subject to the laws of this state governing recording and priority of interests in real property.

1 44-16-9.

2 (a) An environmental covenant shall be perpetual, which shall be stated in such covenant,
3 unless it is:

4 (1) By its terms limited to a specific duration or terminated by the occurrence of a
5 specific event;

6 (2) Terminated by consent pursuant to Code Section 44-16-10;

7 (3) Terminated pursuant to subsection (b) of this Code section;

8 (4) Terminated by foreclosure of an interest that has priority over the environmental
9 covenant; or

10 (5) Terminated or modified in an eminent domain proceeding, but only if:

11 (A) The agency that signed the covenant is a party to the proceeding;

12 (B) All persons identified in subsections (a) and (b) of Code Section 44-16-10 are
13 given notice of the pendency of the proceeding; and

14 (C) The court determines, after hearing, that the termination or modification will not
15 adversely affect human health or the environment.

16 (b) If the agency that signed an environmental covenant has determined that the intended
17 benefits of the covenant can no longer be realized, a court, under the doctrine of changed
18 circumstances, in an action in which all persons identified in subsection (a) and (b) of Code
19 Section 44-16-10 have been given notice, may terminate the covenant or reduce its burden
20 on the real property subject to the covenant. The agency's determination or its failure to
21 make a determination upon request of the current owner of the fee simple of the real
22 property or by any affected member of the public shall be subject to review pursuant to
23 Article 1 of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

24 (c) Except as otherwise provided in subsections (a) and (b) of this Code section, an
25 environmental covenant may not be extinguished, limited, or impaired through issuance
26 of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession,
27 prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar
28 doctrine.

29 (d) An environmental covenant may not be extinguished, limited, or impaired by
30 application of Code Sections 44-5-60 and 44-5-168.

31 44-16-10.

32 (a) An environmental covenant may be amended or terminated by consent only if the
33 amendment or termination is signed by:

34 (1) The agency;

35 (2) The current owner of the fee simple of the real property subject to the covenant;

(3) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) Except as otherwise provided in paragraph (2) of subsection (d) of this Code section, the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest shall not be affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder shall be an amendment.

(d) Except as otherwise provided in an environmental covenant:

(1) A holder may not assign its interest without consent of the other parties; and

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a) of this Code section.

(e) A court of competent jurisdiction may fill a vacancy in the position of holder.

44-16-11.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) A party to the covenant;

(2) The agency;

(3) Any person to whom the covenant expressly grants power to enforce;

(4) Any owner in fee simple whose property abuts the property subject to the environmental covenant, if harm occurs or is reasonably likely to occur;

(5) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(6) A municipality, county, consolidated government, or other unit of local government in which the real property subject to the covenant is located.

(b) This chapter shall not limit the regulatory authority of the agency under law other than with respect to an environmental response project.

(c) A person shall not be responsible for or subject to liability for environmental remediation solely because such person has the right to enforce an environmental covenant.

44-16-12.

The agency may establish and maintain a registry that contains all environmental covenants and any amendment or termination of such covenants. The registry may also contain any

1 other information concerning environmental covenants and the real property subject to
2 them which the agency considers appropriate. The registry, if established, shall be a public
3 record for purposes of Article 4 of Chapter 18 of Title 50.

4 44-16-13.

5 The agency may establish rules and regulations for implementing this chapter and may
6 provide for fees for utilizing this chapter.

7 44-16-14.

8 This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and
9 National Commerce Act (15 U.S.C. Section 7001 et seq.) but shall not modify, limit, or
10 supersede Section 101 of such Act (15 U.S.C. Section 7001(a)) or authorize electronic
11 delivery of any of the notices described in Section 103 of such Act (15 U.S.C. Section
12 7003(b))."

13 **SECTION 2.**

14 All laws and parts of laws in conflict with this Act are repealed.